



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/975,348	10/11/2001	Erwin Tomm	TMM 2 0006	9778

7590 01/31/2003

Steven M. Haas  
FAY, SHARPE, FAGAN,  
MINNICH & McKEE, LLP  
1100 Superior Avenue, 7th Floor  
Cleveland, OH 44114-2518

EXAMINER

MACARTHUR, VICTOR L

ART UNIT PAPER NUMBER

3679

DATE MAILED: 01/31/2003

6

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/975,348

Applicant(s)

TOMM, ERWIN

Examiner

Victor MacArthur

Art Unit

3679

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 December 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

#### ***Claim Rejections - 35 USC § 112***

Claims 1-3, 5 and 6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1, ll.22, recites the phrase “a second associated pole section”. It is unclear if this refers to the same “second associated pole section” recited in line 8 of the claim.

Claim 6 is unclear since it depends from canceled claim 4. For purposes of examination it is assumed that claim 6 depends from claim 1.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

Claims 7-12 and 15 are rejected under 35 U.S.C. 102(e) as being anticipated by USPN 6155743 to Chen (see marked-up copy).

As to claim 7, Chen discloses (figs. 2, 4, 7) a telescoping pole apparatus comprising: a first pole section (11) defining a first bore; a second pole section (12) slidably located in the first bore of the first pole section in a telescoping arrangement; a lock (30, 40, 50) connected (via 32) to the first pole section and adapted to secure the second pole section axially relative to the first pole section, the lock comprising: a base (32) defining an axial through-bore, wherein an end portion of the first pole section is located in the axial through bore; a collar (upper portion of 50) connected to the base and selectively radially constrictable relative to the base, the collar defining an opening aligned with the axial through-bore, the second pole section projecting from the first bore of the first pole section and through the opening of the collar, the collar, when radially constricted relative to the base, firmly engaging and retaining the second pole section in an axially and rotatably fixed position relative the first pole section; a fastener (38) connected to and frictionally engaged with the collar so as to be restrained against unintended rotation relative to the collar, the fastener comprising a threaded end that projects outwardly from the collar; and a control member (39) that mates threadably with the threaded end of the fastener, the control member selectively manually rotatable relative to the fastener in first and second directions (clockwise and counterclockwise) to constrict and expand the collar radially, respectively, the fastener restrained against rotation with the control member by frictional engagement between the fastener and the collar.

Claim 8. Chen discloses (2, 4, 7) that the control member comprises a lever including: a head (central portion of 39) defining a threaded aperture that receives the threaded end of the fastener; and a shank (outer portions of 39) extending from the head and defining a wide flat tab.

Claim 9. Chen discloses (figs. 2, 4, 7) that the telescoping pole apparatus further comprises: a neck (B) projecting outwardly from the base, wherein the collar is connected to the neck and axially spaced from the base.

Claim 10. Chen discloses (figs. 2, 4, 7) that the collar comprises first and second collar portions (left and right halves of upper portion of 50) that are connected to and project outwardly from the neck, the first and second collar portions terminating in respective first and second terminal ends (52, 52') that are spaced apart from each other and defined therebetween a gap in the collar.

Claim 11. Chen discloses (figs. 2, 4, 7) that the first and second terminal ends of the first and second collar portions define respective first and second apertures (521) aligned with each other, wherein the fastener extends through aligned first and second apertures.

Claim 12. Chen discloses (figs. 2, 4, 7) that the fastener comprises a head (head portion of 38) opposite the threaded end and a portion adjacent the head (380) that frictionally engages the first terminal end of the first collar portion whereby the fastener is held against unintended rotation relative to the first and second collar portions upon rotation of the control member relative to the fastener.

Claim 15. Chen discloses (figs. 2, 4, 7) a lock apparatus for fixedly securing first and second telescoping pole sections relative to each other, the apparatus comprising: a first portion (32) adapted for connection to an end portion of a first associated pole section (11); a second

Art Unit: 3679

portion (50) connected to the first portion and defining a collar (upper portion of 50) that is selectively radially constrictable relative to the first portion and adapted for receipt of a second associated pole section (12) partially telescoped into the first associated pole section, the collar, when radially constricted, firmly engaging and fixedly retaining a second associated pole section received thereby, the collar comprising first and second ears (52, 52') separated from each other by a space; a screw (38) extending through the first and second ears of the collar and including a headed end and an opposite threaded end, the screw comprising an unthreaded portion (380) that is tightly frictionally engaged with only one of the first and second ears; and a lever (39) operably coupled to the threaded end of the screw and adapted for rotation in a first direction on the screw causing the lever to be advanced on the screw towards the headed end so that the collar is radially constricted, and adapted for rotation in a second direction opposite the first direction so that the lever moves away from the headed end of the screw and the collar resiliently radially expands wherein the tight frictional engagement between the unthreaded portion of the screw and the one of the first and second ears restrains the screw against rotation with the lever when the lever is moved in the first and second directions.

***Claim Rejections - 35 USC § 103***

Claims 1-3, 5 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 6155743 to Chen (see marked-up copy).

Claim 1. Chen discloses (figs. 2, 4, 7) a lock for temporarily fixedly securing first and second associated pole sections in a telescoped arrangement, the lock comprising: a base (32) defining a axially extending through-bore adapted for close sliding receipt of an end portion (top

Art Unit: 3679

end of 11) of a first associated pole section (11); a neck (31) projecting from the base; a collar (upper portion of 50) connected to the neck and radially constrictable relative to the base, the collar defining an opening aligned with the axially extending through-bore of the base, the collar adapted for close sliding receipt of a second associated pole section (12) partially telescoped into the first associated pole section wherein the collar is defined by first (35, left half of 50) and second (42, right half of 50) collar portions connected to the neck and terminating in respective first (37, 52) and second (43, 52') ears arranged in spaced-apart relation to each other, the ears defining respective first and second bores (372, 521, 432); a fastener (38) extending through the first and second bores between the first and second ears, the fastener including a head (head of 38) abutting the first ear, an unthreaded first portion (380) frictionally engaged (static friction) with a portion of the first ear that defines the first bore to inhibit unintentional rotation of the fastener and a threaded distal end (end of 38 opposite head) extending through the second bore defined in the second ear and projecting outwardly from the second ear; a lever (39) having a head defining a threaded aperture that is threadably engaged with the threaded distal end of the fastener, the lever movable rotatably relative to the threaded distal end of the fastener between an unlocked position, wherein the collar slidably receives and accommodates the second associated pole section, and a locked position, wherein the head of the lever is advanced on the threaded distal end of the fastener toward the head of the fastener and urges the second ear toward the first ear to constrict the collar radially relative to the base into frictional gripping engagement with a second associated pole section received in the collar, wherein the first portion of the fastener defines an unthreaded conformation that is located in the first bore defined by the first ear with a tight frictional fit sufficient to restrain the fastener against rotation upon movement of the lever

Art Unit: 3679

between the unlocked and the locked positions. Chen does not disclose that the first portion of the fastener is cylindrical. It has generally been recognized that a change in the shape of a prior art device is a design consideration within the skill of the art. In re Dailey, 357 F.2d 669, 149 USPQ 47 (CCPA 1966). Knurled cylindrical non-threaded portions are very well known in the art for obtaining a tight frictional fit. Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to modify the shape of the first portion of the fastener to be cylindrical as such practice is a design consideration within the skill of the art.

Claim 2. Chen discloses (figs. 2, 4, 7) that each of the first and second collar portions are spaced axially from the base.

Claims 3 and 14. Chen discloses (figs. 2, 4, 7) that the neck and the collar are defined as a plastic (col.3, ll.10-15) construction. Chen does not expressly disclose that the neck and collar are molded or that they have one-piece construction. It has generally been recognized that one-piece construction, in place of separate elements fastened together, is a design consideration within the skill of the art. In re Kohno, 391 F.2d 959, 157 USPQ 275 (CCPA 1968); In re Larson, 340 F.2d 965, 144 USPQ 347 (CCPA 1965). Accordingly, it would have been obvious to one of ordinary skill in the art to modify the neck and the collar to be one piece as such practice is a design consideration within the skill of the art. Furthermore, the specific method of forming (i.e. molding) is not germane to the issue of patentability of the device itself. Therefore, the limitation "molded" has not been given limited patentable weight. See MPEP § 2113.

Claim 5. Chen discloses (figs. 2, 4, 7) that the axially extending through-bore defines a first (A) and second (B) cylindrical portion, the second cylindrical portion having a smaller



diameter than the first cylindrical portion and located axially between the first portion and the neck.

Claims 6 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 6155743 to Chen (see marked-up copy) in view of Sellers (USPN 4234309).

Chen does not disclose that the fastener has a left-handed double lead thread. Sellers teaches (col.2, l.57 – col.3, l.) a fastener that is left-handed and double threaded for the purpose of increasing thread area and more firmly seating the screw. Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to modify Chen to include a left-handed double-threaded screw, in view of the motivating teaching of Sellers to increasing thread area and more firmly seat the fastener.

### ***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

Art Unit: 3679

MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor MacArthur whose telephone number is (703) 305-5701. The examiner can normally be reached on 8:30am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynne Browne can be reached on (703) 308-1159. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9326 for regular communications and (703) 872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.



VLM  
January 28, 2003



**Lynne H. Browne**  
**Supervisory Patent Examiner**  
**Technology Center 3600**

Attachment: One marked-up copy of USPN 6155743 to Chen.